BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>Corban K.,<br><br>Petitioner,<br><br>vs.<br><br>TRI-COUNTIES REGIONAL CENTER,<br><br>Respondent. | OAH Case No. 2013080192<br><br>(Early Intervention Services Act<br>Gov. Code, § 95000 et seq.) |

# DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on August 19, 2013, in San Luis Obispo, California.

Joseph Bremm, Manager, represented Tri-Counties Regional Center (Respondent or Service Agency).

Rebecca and Paul K.[1], Petitioner's parents, represented Petitioner.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

## ISSUE

Is Petitioner's family required to pay an annual family program fee for Petitioner's participation in Julie Low's Pediatric Services Program (Program)?

[1] Initials have been used instead of family surnames to protect Petitioner's and her family's privacy.

## FACTUAL FINDINGS

1. Petitioner was born on August 27, 2010, and has been found eligible for services under the Early Intervention Services Act (Act), Government Code section 95000 et seq.

2. In February 2012, Petitioner's parents met with Allison Locke (Locke), Petitioner's Service Coordinator at Service Agency for the preparation of an Individualized Family Service Plan (IFSP). Petitioner's parents and Locke agreed that the Program would meet Petitioner's needs. Locke told Petitioner's parents that the services would be free, and Petitioner's parents felt they had nothing to lose by enrolling him in a free program. A new IFSP was prepared after a meeting on January 25, 2013, and services at the Program were to continue.

3. About two days after the January 25, 2013 IFSP meeting, Petitioner's parents received a letter dated January 25, 2013, notifying them that an annual family program fee of $200 was due pursuant to the requirements of Welfare and Institutions Code[2] section 4785. Details regarding possible reduction of or exemption from the fee were contained in the letter. An envelope addressed to the Department of Developmental Services (Department) in Sacramento was provided for remittal of the payment to the Department. A second demand for payment was made on March 30, 2013.

4. Petitioner's parents object to the fee because they were led to believe that there would not be a cost for the Program. His mother testified that they may not have enrolled him in the program had they known about the fee. Petitioner's parents do not claim inability to pay, and have not provided financial information to have the fee reduced. They do not assert that any exemption applies.

5. Service Agency had questions regarding the validity of the fee as it applied to recipients of early intervention services under the Act, and did not implement it for such consumers while it sought clarification from the Department. The January 23, 2013 collection letter was triggered by a directive from the Department.

6. Petitioner's parents ended services at the Program effective June 30, 2013, and declined to have him evaluated for eligibility for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq.

7. Petitioner's parents filed a Fair Hearing Request on February 12, 2013.

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[2] Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

LEGAL CONCLUSIONS

1. In enacting the Act, the Legislature declared its intent that early intervention services for infants at risk of developing developmental disabilities constitute a cost-effective way to significantly reduce the potential impact of many disabling conditions and positively influence later development when the child reaches school age. (Gov. Code, § 95000.) Direct services are provided through the regional center system created pursuant to the Lanterman Act, in coordination with other State agencies. (Gov. Code, §§ 95002 and 95003.)

2. Recent amendments to the Lanterman Act enacted as part of the budget process have limited the availability of certain services and supports to individuals receiving services under the Act. Section 4646.4, subdivision (a), provides, in part: "Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's . . . individualized family service plan pursuant to the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports shall ensure all of the following: [§] . . . [§] (3) Utilization of other services and sources of funding as contained in Section 4659. [§] (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and supports needs as provided in the least restrictive and most appropriate setting. . . ."

3. Section 4659, in turn, provides, in pertinent part: "(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. . . ."

4. Another provision enacted at a time of budget difficulties, section 4785, provides: "(a) (1) Effective July 1, 2011, a regional center shall assess an annual family program fee, as described in subdivision (b), from parents whose adjusted gross family income is at or above 400 percent of the federal poverty level based upon family size and who have a child to whom all of the following apply:

"(A) The child has a developmental disability or is eligible for services under the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code).

"(B) The child is less than 18 years of age.

"(C) The child lives with his or her parent.

"(D) The child or family receives services beyond eligibility determination, needs assessment, and service coordination.

"(E) The child does not receive services through the Medi-Cal program.

"(2) An annual family program fee shall not be assessed or collected pursuant to this section if the child receives only respite, day care, or camping services from the regional center, and a cost for participation is assessed to the parents under the Family Cost Participation Program.

"(3) The annual family program fee shall be initially assessed by a regional center at the time of the development, scheduled review, or modification of the individual program plan (IPP) pursuant to Sections 4646 and 4646.5, or the individualized family services plan (IFSP) pursuant to Section 95020 of the Government Code, but no later than June 30, 2012, and annually thereafter.

"(4) Application of this section to children zero through two years of age, inclusive, shall be contingent upon necessary approval by the United States Department of Education.

"(b) (1) The annual family program fee for parents described in paragraph (1) of subdivision (a) shall be two hundred dollars ($200) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under the California Early Intervention Services Act.

"(2) Notwithstanding paragraph (1), parents described in paragraph (1) of subdivision (a) who demonstrate to the regional center that their adjusted gross family income is less than 800 percent of the federal poverty level shall be required to pay an annual family program fee of one hundred fifty dollars ($150) per family, regardless of the number of children in the family with developmental disabilities or who are eligible for services under the California Early Intervention Services Act.

"(c) At the time of intake or at the time of development, scheduled review, or modification of a consumer's IPP or IFSP, but no later than June 30, 2012, the regional center shall provide to parents described in paragraph (1) of subdivision (a) a form and an envelope for the mailing of the annual family program fee to the department. The form, which shall include the name of the children in the family currently being served by a regional center and their unique client identifiers, shall be sent, with the family's annual program fee, to the department.

"(d) The department shall notify each regional center at least quarterly of the annual family program fees collected.

"(e) The regional center shall, within 30 days after notification from the department pursuant to subdivision (d), provide a written notification to the parents from whom the

department has not received the annual family program fees. Regional centers shall notify the department if a family receiving notification pursuant to this section has failed to pay its annual family program fees based on the subsequent notice pursuant to subdivision (d). For these families, the department shall pursue collection pursuant to the Accounts Receivable Management Act (Chapter 4.3 (commencing with Section 16580) of Part 2 of Division 4 of Title 2 of the Government Code).

"(f) A regional center may grant an exemption to the assessment of an annual family program fee if the parents demonstrate any of the following:

"(1) That the exemption is necessary to maintain the child in the family home.

"(2) The existence of an extraordinary event that impacts the parents' ability to pay the fee or the parents' ability to meet the care and supervision needs of the child.

"(3) The existence of a catastrophic loss that temporarily limits the ability of the parents to pay and creates a direct economic impact on the family. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters, accidents involving, or major injuries to, an immediate family member, and extraordinary medical expenses.

"(g) Services shall not be delayed or denied for a consumer or child based upon the lack of payment of the annual family program fee.

"(h) For purposes of this section, "parents" means the parents, whether natural, adoptive, or both, of a child with developmental disabilities under 18 years of age.

"(i) Parents described in paragraph (1) of subdivision (a) shall be jointly and severally responsible for the annual family program fee, unless a court order directs otherwise.

"(j) (1) "Total adjusted gross family income" means income acquired, earned, or received by parents as payment for labor or services, support, gift, or inheritance, or parents' return on investments. It also includes the community property interest of a parent in the gross adjusted income of a stepparent.

"(2) The total adjusted gross family income shall be determined by adding the gross income of both parents, regardless of whether they are divorced or legally separated, unless a court order directs otherwise, or unless the custodial parent certifies in writing that income information from the noncustodial parent cannot be obtained from the noncustodial parent and in this circumstance only the income of the custodial parent shall be used to determine the annual family program fee."

5. In 2012 and 2013, Petitioner was a child under three years of age receiving services pursuant to the Act, and Service Agency assessed the program fee as required by section 4785. Petitioner's parents did not assert to Service Agency, and did not present any evidence at the hearing, that they meet any of the income or other exemptions contained in section 4785. Therefore, Petitioner's parents are required to pay the program fee assessed by Service Agency.

6. Petitioner's parents nevertheless argue that they were never told about the fee before he enrolled in the Program, that they may not have enrolled him in the Program had they known about the fee, and that it would be unfair to collect the fee from them in these circumstances. They did not present legal authority in support of their argument. However, the doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. In order for equitable estoppel to apply, the following requirements must be met: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury." (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Although the doctrine should be applied against the government "where justice and right require it," it cannot be applied against the government where to do so would effectively nullify a "strong rule or policy, adopted for the benefit of the public . . . ." (*City of Long Beach v. Mansell, supra,* 3 Cal.3d at p. 493.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

Petitioner's parents satisfy some of the criteria for application of equitable estoppel. Service Agency knew about the fee at the time that Petitioner enrolled in the Program, and it is fair to conclude that in making a representation that the Program would be free Service Agency expected Petitioner to rely on the representation and enroll in it. Although it is a legal maxim that ignorance of the law is not an excuse, Petitioner's parents were not aware that Service Agency had no authority to waive or suspend collection of the program fee. Petitioner's parents relied on Service Agency's representation and enrolled Petitioner in the Program, and were injured because they incurred the fee obligation.

However, the Department cannot be equitably estopped from collecting the program fee. Section 4785, a very specific and detailed statute, embodies a strong rule or policy adopted for the benefit of the public. It was initially enacted as part of the budget process in 2011 (Stats. 2011, chapter 37, § 22 (AB 104)), effective June 30, 2011, as a two-year provision. The statute was extended indefinitely in 2013 (Stats. 2013, chapter 35, § 8 (AB 89), effective June 27, 2013. In each instance, the bill took effect immediately. Thus, not only has the Legislature expressed its intent in such a specific and urgent manner, but it reaffirmed its policy in a relatively short time. The Legislature has therefore concluded that imposition of the program

fee is necessary for the benefit and necessity of programs that assist developmentally disabled individuals and individuals who benefit from early intervention services.

Moreover, the statute has very specific provisions for a regional center to grant exemptions. Inasmuch as none of these exemptions applies in this case, to permit a waiver in these circumstances would impermissibly expand the authority given to the Department, which has been delegated in part to Service Agency.

7. Accordingly, Petitioner's parents are required to pay the $200 program fee, by reason of factual finding numbers 1 through 7 and legal conclusion numbers 1 through 6.

## ORDER

Petitioner's appeal is denied.

Dated: August 26, 2013

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SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings